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13 iBAHN Corporation

14 UNITED STATES DISTRICT COURT  
15 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
16 WESTERN DIVISION

17 NOMADIX, INC.,  
18 Plaintiff,  
19 v.  
20 HEWLETT-PACKARD COMPANY, et  
al.  
21 Defendants.  
22  
23  
24

Case No. CV-09-08441-DDP (VBKx)

**IBAHN'S STATEMENT OF  
NONOPPOSITION TO  
NOMADIX'S MOTION TO  
DISMISS ITS DECLARATORY  
JUDGMENT CLAIMS AGAINST  
IBAHN CORP.**

**Hearing Date: May 9, 2011  
Time: 10:00 a.m.  
Courtroom: 3**

**Honorable Dean D. Pregerson**

25 AND RELATED COUNTERCLAIMS  
26  
27  
28

1 iBAHN Corporation (“iBAHN”) hereby submits this statement with respect  
2 to *Nomadix’s Motion to Dismiss its Declaratory Judgment Claims Against iBAHN*  
3 *Corporation* (Docket No. 29) (“*Motion*”).<sup>1</sup>

4 Currently pending before this Court is iBAHN General Holding  
5 Corporation’s (“IGH”) Motion to Intervene (Docket No. 278), which is set to be  
6 heard on May 2, 2011. Additionally, *IGH v. Nomadix, Inc.*, Case No, 11-02604  
7 (the “IGH Action”), was transferred to this Court on April 1, 2011. In the IGH  
8 Action, IGH asserted three patents against Nomadix (the **exact same patents** for  
9 which iBAHN has already filed a claim construction brief (Docket No. 257), for  
10 which Nomadix has filed a responsive claim construction brief for (Docket No.  
11 291), and for which iBAHN has been preparing a reply claim construction brief to  
12 be filed on April 29) and requested a declaratory judgment order for non-  
13 infringement and invalidity of the **exact same patents** that Nomadix asserted  
14 against iBAHN in this case.<sup>2</sup> iBAHN respectfully submits that IGH’s Motion to  
15 Intervene and IGH’s forthcoming motion to consolidate the IGH Action and this  
16 case are intimately related with this *Motion*.

17 As such, while iBAHN does not oppose Nomadix’s *Motion*, iBAHN  
18 respectfully requests that before ruling on the *Motion*, that this Court consider  
19 ordering *sua sponte* the consolidation (for purposes of Markman and/or summary  
20 judgment motions) of the IGH Action with this case and/or consider delaying ruling  
21 on this *Motion* until IGH’s Motion to Intervene is resolved.<sup>3</sup> iBAHN submits that

22 <sup>1</sup> As a preliminary matter, iBAHN objects to Nomadix’s characterization of the  
23 meet-and-confers in its notice of motion. iBAHN repeatedly requested that  
24 Nomadix agree to a stipulation that would have prevented virtually all of the recent  
25 motion practices – remedying the situation for both parties. However, Nomadix has  
26 continually refused to, in good faith, try to reach an amicable solution.

27 <sup>2</sup> Nomadix filed its opening claim construction brief (Docket No. 255), iBAHN and  
28 the other defendants in this case filed their responsive claim construction brief  
(Docket No. 292), and Nomadix is due to file its reply claim construction brief on  
April 29<sup>th</sup>.

<sup>3</sup> The Court may, on its own, consolidate the two actions, much as it chose to do  
with the separately-filed Solution Inc. case. *See*, Dkt. 218. If the Court does not  
consolidate the cases on its own, IGH will file a motion to consolidate on April 25  
(the soonest it can do so under L.R. 7-3).

1 its proposal would be more efficient and would avoid having to unnecessarily  
2 conduct a separate Markman hearing. The parties are already two-thirds complete  
3 with Markman briefing (iBAHN will file its reply claim construction brief by April  
4 29), and will be ready for the Technology Tutorial on May 12 and the Markman  
5 hearing on May 19.

6  
7 Dated: April 18, 2011

Orrick, Herrington & Sutcliffe LLP

8  
9 /s/ Benjamin J. Hofileña  
Benjamin J. Hofileña

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